IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

S.B.Civil Writ Petition No.798/1996

Dr. Sampath Singh Bandawat.

vs.

Union of India and others.

Date : 10.8.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.Dinesh Mehta, for the petitioner.
Mr.Ravi Bhansali, for the respondents.

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BY THE COURT :

Heard learned counsel for the parties.

In a matter of excess billing by the telephone department for the telephone no.45105 (old number 23705) installed at the residence of the petitioner, the petitioner approached this Hon'ble Court by filing writ petition no.4872/1992 which was decided by this Court vide order dated 7.2.1994 following the earlier

judgments of this Court rendered in SBC Writ Petition no.5760/1991 (Indian Gum Industries vs. Union of India & Anr.) decided on 15.12.1993 and SBC Writ Petition No.5961/1992 (Shailash Patwa vs. Union of India & Ors.) decided on 21.12.1993 and the matter was sent to the committee of the respondent telephone department with a direction to hear the petitioner in person and decide the case according to law. The petitioner earlier submitted solvent security in compliance to the order dated 15.9.1992 passed in the petitioner's writ petition no.4872/1992 and that was made continued till the matter is finally decided by the concerned committee. This Court further directed that the Committee shall decide the case of the petitioner within a period of four months and not later than four months.

In pursuance of the order of this Court dated 7.2.1994 given in writ petition no.4872/1992, the petitioner's matter was considered by the Excess Metering Case Committee vide order dated 8.2.1996. The petitioner has challenged this order dated 8.2.1996 by which though the Committee specifically held that the calls metered in 2 fortnights from 31.1.1991 to 15.2.1991 and 16.2.1991 to 28.2.1991 were very much on the higher side as compared to calling rate of other fortnights of the disputed bills. The Committee also clearly held that there appears a possibility of false

metering during these fortnights because of some technical fault which passed unnoticed. Thereafter, the Committee held that on the basis of detailed examination, the members of the Committee reached the conclusion that there might be possibility of false metering in the above said 2 fortnights billing. However, despite this finding, the Committee decided to charge the subscriber for each of the 2 fortnights equivalent to 7411 metered in the fortnight ending on 30.1.1991 and total calls chargeable in the bimonthly period ending on 15.2.1991 and 15.4.1991 should have been 22074 and 10112 respectively. Thereafter, the Committee decided to grant rebate of 10606 and 19126 calls to the subscriber in the bills dated 1.3.1991 and 1.5.1991 respectively. (This includes the rebate of 10000 and 18000 calls already granted). Ultimately, the Committee was of the view that so far as the rebate to be granted in the bill dated 1.3.1991 is concerned, that is within the financial powers of T.D.M. but the rebate justified in the bill dated 1.5.1991 was beyond the financial powers of T.D.M. and, therefore, the Committee made a proposal for submission to the G.M. (W).

In view of the above, learned counsel for the petitioner submitted that though the Committee did not have the jurisdiction to decide the matter after four

months in view of the specific direction given by this Court in writ petition no.4872/1992 on 7.2.1994 and with expiry of period of 4 months, the respondent department lost its right to recover any amount from the petitioner.

On merits, learned counsel for the petitioner submitted that the petitioner may confine his right if the relief is granted to the petitioner in the light of the findings recorded by the Committee in favour of the petitioner and which was not given to the petitioner because of lack of powers of the Committee despite empowered by this Court to decide the case of the petitioner. It is also submitted that even if any approval of G.M. was needed, then it was the duty of the department to get the approval and the petitioner could not have been asked to submit another petition before the G.M. only for getting approval in the light of the decision of the Committee.

Learned counsel for the respondents submitted that the matter was considered thoroughly by the Committee and there was some delay and the Committee tried to decide the matter but the petitioner did not cooperate and, therefore, some delay was caused. It is submitted that thereafter, on merits, the matter has been decided by the Committee and there is no illegality in the order passed by the Committee. The Committee could have

passed the order in accordance with its own financial powers and if the Committee decided to direct the petitioner to approach the G.M., then the Committee has not committed any error.

I considered the submission of learned counsel for the parties and perused the facts of the case as well as the reasons given by the Committee.

The Committee's finding is categorical and that may be quoted here :-

> “The calls metered in 2 fortnights from 31.1.91 to 15.2.91 and 16.2.91 to 28.2.91 were very much on the higher side as compared to calling rate of other fortnights of the disputed bills. Though on testing the subscriber meter was found all right, there appears a possibility of false metering during these two fortnights because of some technical fault which passed un noticed. It appears that the calling rate of the telephone started to increase after the occurrence of marriage of the son of the subscriber. It is presumed that the calls metered in the fortnight ending 15.1.91 & 30.1.91 were based on the actual local/NSD/ISD calls made from the telephone.
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> On the basis of the detailed examination the

members of the Committee reached the conclusion that there might be possibility of false metering in the fortnights ending 15.2.91 & 28.2.91 and it decided to charge the subscriber for each of these two fortnights equivalent to 7411 metered in the fortnight ending 30.1.91. Thus the total calls chargeable in the bimonthly period ending 15.2.91 & 15.4.91 comes to 22,074 & 10,112 respectively. It was decided to grant rebate of 10,606 & 19,126 calls to the subscriber in the bill dt. 1.3.91 & 1.5.91 respectively (This includes the rebate of 10,000 and 18,000 calls already granted). The rebate tobe granted in the bill dt. 1.3.91 is within the financial powers of T.D.M. but the rebate justified in the bill dt. 1.5.91 was beyond the financial powers of T.D.M., therefore, it was decided that the case with the recommendations of E.M.C. to grant rebate of 19,126 calls may be submitted to G.M.(W) for sanction. It may be mentioned here that the rebate of 10,000 and 18,000 calls in the bill dated 1.3.91 & 1.5.91 respectively was earlier granted by the E.M.C. but the subscriber had filed writ petition in the Hon'ble Raj. High Court, Jodhpur against this decision.

The AO(TR) while sending a copy of the minutes of the meting may intimate the decision of the

E.M.C. to the subscriber and request him to pay the balance amount of the bill dt. 1.3.91. He may submit the case for the bill dt. 1.5.91 for submission to the G.M. (W) early."

A perusal of the reasons given by the Committee clearly discloses that the Committee was under impression that the Committee is giving some rebate to the petitioner but in fact, the Committee recorded that the meter was defective and the calls were recorded wrongly by the meter. The rebate can be against any liability and when the meter was found faulty, then there was no liability of the petitioner on the basis of such faulty meter. When this finding was recorded by the Committee, then it was the duty of the Committee to make correction in the bill of the petitioner. The Committee proceeded on absolutely erroneous assumption that the petitioner is chargeable with the amount mentioned in the bill despite the fact that he has not used the telephone for said calls and, therefore, held that the rebate can be granted by the G.M. of the Telecom department.

As stated above, it is not a case of rebate but it was making correction in the bill. Be it as it may be, even if the rebate could have been granted by G.M., then also the matter should have been approved by the

G.M. of the department itself without asking the petitioner to approach the G.M. directly because after recording finding of faulty meter, it was the duty of the department and not the duty of the petitioner to obtain correction by his own efforts.

In these facts and circumstances and in view of the specific finding of the Committee, the petitioner's writ petition deserves to be allowed, hence, allowed.

Since the Committee has already decided that the petitioner is entitled to benefit of not charging the calls 19,126 for the billing month dated 1.5.1991 and it needs any approval of the G.M., therefore, the respondents shall not recover any amount against the said 19,126 calls which is mentioned against the bill dated 1.5.1991. It is held that the petitioner, in view of the finding recorded by the Committee itself, shall not be liable to pay any amount towards calls 19,126 and 10,606 referred in the order of the Committee. The respondent may issue fresh bill if any amount is still due in the petitioner in the said billing months but shall not include the calls referred above.

(PRAKASH TATIA), J.

S.Phophaliya